

### **REMARKS**

This paper is responsive to any paper(s) indicated above, and is responsive in any other manner indicated below.

### **CROSS-REF. TO RELATED APPLICATIONS - UPDATED**

Responsive to the objection within the section numbered "3" on page 2 of the Office Action, Applicant's Cross-Ref. To Related Applications section has been updated. Reconsideration and withdrawal of such objection are respectfully requested.

### **NON-STATUTORY DBL PAT. REJECT. - TERMINAL DISCLAIMER FILED**

The obviousness-type double patenting rejection of claims 1-20 as set forth within the sections "6-7" beginning on page 4 of the "Detailed Action" of the Office Action, is respectfully traversed. However, in order to travel a path of least resistance to obtaining a patent for the present application, submitted herewith is an executed Terminal Disclaimer to overcome the non-statutory double patenting rejection. As a result of the foregoing, reconsideration and withdrawal of the double patenting rejection of the subject claims are respectfully requested. The above statements, or the filing of any Terminal Disclaimer, should not be taken as an indication or admission that the rejection was valid, but is merely use of a procedural approach to obtain a patent (without prejudice or disclaimer) as quickly as possible given that the present application's patent may have coextensive term anyways as measured from the same original filing date, regardless of the Terminal Disclaimer.

Further discussions/arguments concerning such rejection(s), claims and/or reference are left for the future if/when appropriate.

As a final point, it is respectfully submitted as a reminder that, if new art is now cited against any of Applicant's unamended claims, then it would not be proper to make a next action final.

### **REJECTION UNDER '112, 2ND PAR. - TRAVERSED**

Claims 1-10 have been rejected under 35 USC '112, second paragraph, as being indefinite for the concerns listed within the section numbered "8" on page 5 of the Office Action. Applicant respectfully traverses.

MPEP 2173.05(h) states that "Alternative expressions are permitted if they represent no uncertainty or ambiguity with respect to the question of scope or clarity of the claims." Also, MPEP 2173.01 entitled "Claim Terminology" states:

"A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as the terms are not used in ways that are contrary to accepted meanings in the art. Applicant may have functional language, **alternative expressions**, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought."

It is respectfully submitted that there is no uncertainty or ambiguity with respect to Applicant's "and/or" expression. More particularly, Webster's clearly defines that "and/or" is "used to indicate that either **and** or **or** may be used to connect words, phrases, or clauses." Applicant is using "and/or" in accordance with its accepted meaning. As a result, one skilled in the art would clearly (and instantly) know that Applicant is claiming a plurality of alternative situations, i.e., assuming only

two generic items "A" and "B" for simplicity, Applicant's claiming "A and/or B" covers situations where A and B are present, where only A is present, and where only B is present. There is nothing uncertain or ambiguous about Applicant's usage.

As an aside, the MPEP contains hundreds (if not thousands) of occurrences of using the "and/or" expression throughout its text, and examiner's often use such expression within rejections (e.g., rejected under 35 USC 102 and/or 103). That is, "and/or" is a widely used and clearly understood expression, even within the patent area.

As the foregoing is believed to have addressed all '112 second paragraph concerns, reconsideration and withdrawal of the '112 second paragraph rejection are respectfully requested.

#### **ALL CLAIMS IN CONDITION FOR ALLOWANCE**

In view of the fact that all objections have been overcome, and in view of the Terminal Disclaimer filed to obviate any double-patenting rejection, it is respectfully submitted that all presently pending claims are now in condition for allowance. A Notice of Allowance with respect to the present application is respectfully requested.

#### **RESERVATION OF RIGHTS**

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer. That is, any above statements, or any present amendment or cancellation of claims (all made without prejudice or disclaimer), should not be taken as an indication or admission that any

objection/rejection was valid, or as a disclaimer of any scope or subject matter. Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

#### **EXAMINER INVITED TO TELEPHONE**

The Examiner is invited to telephone the undersigned at the local D.C. area number 703-312-6600, to discuss an Examiner's Amendment or other suggested action for accelerating prosecution and moving the present application to allowance.

#### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR '1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 501.40492CX2) and please credit any excess fees to such deposit account.

Based upon all of the foregoing, allowance of all presently-pending claims is respectfully requested.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

A handwritten signature in cursive script, appearing to read "Paul J. Skwierawski".

Paul J. Skwierawski  
Registration No. 32,173

PJS/slk  
(703) 312-6600